

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES E. SPIVA,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:12-CV-00252-RCJ-WGC

ORDER

James E. Spiva, a Nevada prisoner, has submitted a petition for a writ of habeas corpus (ECF #1-1) and paid the filing fee (ECF #4).

The habeas petition (ECF #1-1) shall be filed and served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also submitted a motion for the appointment of counsel (ECF #1-3). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of

1 counsel would amount to a denial of due process, and where the petitioner is a person of such limited
2 education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also*
3 *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition on file in this action appears sufficiently
4 clear in presenting the issues that petitioner wishes to raise. Counsel is not justified at this time. The
5 motion is denied without prejudice.

6 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** and **ELECTRONICALLY**
7 **SERVE** the petition (ECF #1-1) on the respondents.

8 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
9 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or other
10 response, respondents shall address any claims presented by petitioner in his petition as well as any
11 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all
12 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
13 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
14 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
15 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**
16 **five (45) days** from the date of service of the answer to file a reply.

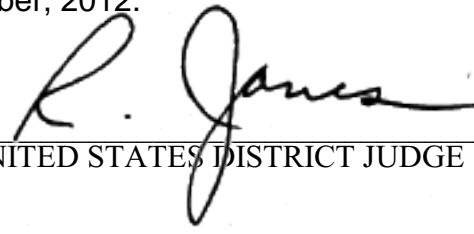
17 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
18 General of the State of Nevada a copy of every pleading, motion, or other document he submits for
19 consideration by the court. Petitioner shall include with the original paper submitted for filing a
20 certificate stating the date that a true and correct copy of the document was mailed to the Attorney
21 General. The court may disregard any paper that does not include a certificate of service. After
22 respondents appear in this action, petitioner shall make such service upon the particular Deputy Attorney
23 General assigned to the case.

24 **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents
25 herein shall be filed with a separate index of exhibits identifying the exhibits by number or letter. The
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1 CM/ECF attachments that are filed further shall be identified by the number or numbers (or letter or
2 letters) of the exhibits in the attachment. The hard copy of any additional state court record exhibits
3 shall be forwarded – for this case – to the staff attorneys in Reno.

4 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF
5 #1-2) is **DENIED without prejudice**.

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7 Dated this 6th day of September, 2012.

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10 UNITED STATES DISTRICT JUDGE
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